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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

AMERICAN GAS ASSOCIATION,
Appellant,

v.

CONSUMER ENERGY COUNCIL OF AMERICA, et al.,

On Appeal From The United States Court of Appeals
For The District of Columbia Circuit

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the requirements of Article III, § 2, of the Constitution, which limits the judicial power of the United States to the resolution of "cases" and "controversies," are satisfied where retail purchasers of natural gas allege injury from the decision of the Federal Energy Regulatory Commission, not to extend program of incremental pricing, as basis for challenge to the constitutionality of section 202(c) of the Natural Gas Policy Act, 15 U.S.C. § 3342(c).

2. Whether section 202(c) of the Natural Gas Policy Act, 15 U.S.C. § 3342(c), is severable from the rest of section 202, where there is no severability clause in the Act and where the proposed rule required by section 202(a) can take effect only through the congressional review procedure provided by section 202(c).

3. Whether revocation by the Federal Energy Regulatory Commission of the rule proposed pursuant to section 202(a) rendered moot the constitutionality of section 202(c).

4. Whether section 202(c) of the Natural Gas Policy Act, which provides for expansion of an experimental program of "incremental pricing" of natural gas only upon failure of both houses of Congress to disapprove, is constitutional.

5. Whether delegation of rulemaking authority to the Federal Energy Regulatory Commission for extension of incremental pricing without standards governing appropriate application is constitutional.

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AMERICAN GAS ASSOCIATION,[1]

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v.

CONSUMER ENERGY COUNCIL OF AMERICA, et al.[2]

On Appeal From The United States Court of Appeals
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JURISDICTIONAL STATEMENT

OPINIONS DELIVERED BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 673 F.2d 425. The

[1] The listing of all member companies of the American Gas Association, their parents, subsidiaries and affiliates required by Rule 28.1 of the Supreme Court Rules is provided in Special Appendix A herein. References to "Appendix" or "App." are to the (joint) Appendix to Jurisdictional Statement submitted April 29, 1982, by the Process Gas Consumer Group, et al., in a related case, No. 81-2008.

[2] Petitioners in the Court of Appeals included Consumer Energy Council of America ("CECA"), Consumer Federation of America, and Public Citizen. The named respondent was the Federal Energy Regulatory Commission, with the American Gas Association, United Distribution Companies, Interstate Natural Gas Association, Process Gas Consumers Group, and Petrochemical Energy Group, intervenors in support of respondent. The United States appeared as amicus curiae in support of petitioners, while the United States Senate and the Speaker of the House of Representatives appeared as amici curiae in support of respondent. Motions to intervene filed, after the issuance of the court's judgment, by the United States Senate and the Speaker of the House of Representatives were granted by the court of appeals on March 2, 1982.

Federal Energy Regulatory Commission's (FERC) rule-proposal included in Order No. 80, App. at 123a-195a, is published at 45 Fed. Reg. 31622 (1980). FERC's decision denying rehearing of and revoking Order No. 80, App. at 196a-203a, is reported at 45 Fed. Reg. 54741 (1980), and its decision denying rehearing of its revocation of Order No. 80, App. at 204a-206a, is reported at 45 Fed. Reg. 71780 (1980).

JURISDICTION

This is an appeal from a decision of the United States Court of Appeals for the District of Columbia Circuit, issued January 29, 1982, holding unconstitutional section 202(c) of the Natural Gas Policy Act of 1978 [hereinafter "NGPA"], 15 U.S.C. §3342(c). Federal jurisdiction in that court was based on section 506 of the NGPA, 15 U.S.C. §3416. A timely petition for rehearing was filed February 26, 1982, by the American Gas Association and was denied March 10, 1982. App. at 210a. Timely Notice of Appeal was filed by the American Gas Association March 26, 1982, in the United States Court of Appeals for the District of Columbia Circuit. App. at 220a.

The jurisdiction of this Court is invoked under 28 U.S.C. §1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Constitution and sections of the Natural Gas Policy Act are set forth in the Appendix. App. at 222a-231a.

STATEMENT OF THE CASE

1. THE NATURAL GAS POLICY ACT[3] AND ITS LEGISLATIVE HISTORY

The Natural Gas Policy Act of 1978 ("NGPA") was the

[3]Pub. L. No. 95-621, 92 Stat. 3351 (codified at 15 U.S.C. §§3301-3324).

product of extended, difficult and intense congressional consideration, aptly described by Speaker of the House O'Neill:

> We have struggled with this issue now for 18 months. The Congress has spent more floor hours, more committee hours, more conference hours, and more task force hours on this legislation than it has on any other issue before the 95th Congress . . .
>
> It is the most difficult issue that has been faced by any Congress in this century. For many of you, it is perhaps the most difficult vote you will ever have to cast in your political career . . .

124 Cong. Rec. H13413 (daily ed. October 14, 1978).

The basic problem underlying the need for this legislation was the inability of the price-regulated interstate natural gas market to provide sufficient volumes to meet national demand for gas. The causes of the problem were the low prices imposed on the interstate market and the need for financial incentives to encourage production. Titles I and II of the NGPA reflect the basis of the compromise forged to provide a solution. Title I established higher incentive prices for "new" gas, the production of which had not yet begun, and deregulated the wellhead price for such gas as of January 1, 1985. Gas for which no further incentive was necessary to encourage production, i.e. "old" gas, with regulated prices which already reflected production incentives, continued to be regulated. Congress believed that unregulated wellhead pricing of new gas would cause significantly higher fuel prices for residential and other high-priority users, and adopted Title II as a means to monitor the rise in gas prices vis-a-vis other fuels and to prevent high-priority users' fuel bills from becoming unacceptably high. Title II was intended to allow the residential user to avoid in part the direct effect of such increases by alloting certain portions of the incremental increases in costs to industrial users.

Title II was itself the product of hard negotiation between the House and the Senate. The original bill proposed by the Senate included incremental pricing for industrial users served by interstate pipelines. The House sought heavier protection for high priority users by requiring incremental pricing for all low priority users served at both the interstate pipeline and

distribution company levels. The compromise reached was to accommodate the House's desire for stronger "protection" of homeowners but to withhold broad application of this new pricing program pending experimentation with a small class of industrial users, i.e. those using gas for boiler fuel use. Title II also placed a ceiling on the maximum price industrial users would pay for the gas in order to assure natural gas a continued competitive market position; the incremental surcharge could not increase the cost of gas above the equivalent cost of alternate fuels. The decision to withhold wide application of incremental pricing was based on the very real fear that industrial users would stop buying gas and leave homeowners to pay larger portions of fixed costs.

The initial application by rule of incremental pricing, to boiler fuel users, was thus required. Section 201 of the NGPA provided that a rule be established within one year of enactment.[4] Expansion of incremental pricing, however, was not required. Section 202(a) provides two parallel and inter-dependent mandates in tandem. Section 202(a)(1) directs the FERC to "prescribe an amendment to the [Section 201] rule"[5] to extend incremental pricing to other industrial users. Section 202(a)(2) allows the proposed amendment "to take effect only as provided under subsection (c) of this section."[6] Subsection (c) provides Congress with an opportunity to review and veto the proposed expansion of incremental pricing [hereinafter "Rule II proposal"]. Expansion would take effect after thirty legislative days "unless, during such 30-day period of continuous session of Congress, either House of Congress adopts a resolution of disapproval"[7] FERC could, upon disapproval, submit another amendment to Congress only after a six-month interval and before a two-year period from the first disapproval resolution expires.[8]

The Report issued by the Conference Committee and the legislative history of the NGPA in general confirm the

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[4] 15 U.S.C. §3341.
[5] *Id.* §3342(a)(1).
[6] *Id.* §3342(a)(2).
[7] *Id.* §3342(c)(1).
[8] *Id.* §3342(c)(2)(B).

contingency of any extension of incremental pricing upon approval by Congress. Specifically, the Conference Report provides:

> A two stage process is utilized for identification of users who will be subject to incremental pricing. First, the Commission is required to develop a rule, within 12 months after the date of enactment, for implementation of incremental pricing applicable to certain industrial boiler fuel facilities. Second, the Commission is required to develop an amendment to the first rule, within 18 months after the date of enactment, for implementation of incremental pricing to other industrial users. This amendment to the first rule will be submitted to Congress for review. The amendment becomes effective unless disapproved by either House of Congress. If the second rule is disapproved, the Commission may submit a substitute proposal for review under the same procedure.[9]

Equally compelling are statements made in debate by Senator Jackson, chief sponsor of the Conference Report. In response to questions about possible loss of industrial consumers of gas owning to increased prices, Senator Jackson noted:

> [T]his *bill does not compel* incremental pricing with respect to any industrial use other than in large boilers. Extension of incremental pricing beyond boiler use *could be prevented* by a majority vote of either House of Congress. . . .

124 Cong. Rec. S15221 (daily ed. September 15, 1978) (emphasis added). Senator Percy then indicated his support for the proposed legislation, stating:

> Some contend that the combination of incremental pricing provisions and curtailment priorities may drive large industrial gas users to oil. That would increase the demand for imported oil and *increase the residential consumers' cost of gas.* Both are very serious

[9] S. Rep. n. 95-1126 (H.R. Conf. Rep. No. 95-1752), 95th Cong., 2d Sess. [hereinafter cited as "Conference Report"], *reprinted in* [1978] U.S. Code Cong. Admin. News 8983. Cited here at 95-97, U.S. Code Cong. Admin. News at 9012-13.

> problems. But we now have the assurance that enough flexibility will be built into the incremental pricing regulations to eliminate those problems.
>
> *[W]e must keep in mind that the second incremental pricing rule – the one with wide application – is subject to a one House veto. If we do not like incremental pricing, we can vote it down then. It is not a reason to vote against the whole bill now.*

Id. at S15222 (emphasis added). Similarly in the final House debate on the Conference Report, Representative Dingell noted the conferees had provided statutory guarantees against the prospect that incremental pricing would drive industrial users off natural gas and onto other fuels, a result "contrary to the very purpose of the bill's provision" (124 Cong. Rec. H13,114 (daily ed. October 14, 1978)), and of concern to many in Congress. The very first of the statutory guarantees identified by Representative Dingell was that:

> The *mandatory requirements* of incremental pricing *apply only to boiler fuel* users. Any broadening of incremental users is subject to congressional review and single House veto.

Id. at H13115 (emphasis added).

2. AGENCY DEVELOPMENT OF PROPOSED RULE

On September 28, 1979, the FERC issued final regulations implementing section 201 of the NGPA, establishing the incremental pricing surcharge to certain industries using natural gas as a boiler fuel.

The FERC initiated the development of its Rule II proposal, designed for expansion of the incremental pricing program by issuing a notice of proposed rulemaking November 15, 1979.[10] On May 6, 1980, having completed its assigned task, the FERC issued, subject to congressional review, the "Rule Required under Section 202 of the Natural Gas Policy Act."[11]

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[10] Notice of Proposed Rulemaking and Public Hearings, FERC Docket No. RM80-10, 44 Fed. Reg. 67170 (November 23, 1979).

[11] App. at 123a.

which would have expanded the program to all industrial end-users not exempt under the NGPA. The Commission viewed its role as limited to using its technical expertise to present to Congress a Rule II proposal the merits of which would be judged by Congress.

> By virtue of the very review procedures built into section 202, it seems clear that the Congress sought to have this Commission develop a meaningful Phase II rule. The Congress would not have a meaningful choice if the Commission were to offer no rule, or a very narrow rule, for its review. The Congress has reserved to itself the fundamental judgement as to whether an expansion of incremental pricing is consistent with current national priorities.[12]

3. HOUSE VETO

The Report of the House Committee on Interstate and Foreign Commerce, accompanying a resolution (H.Res. 655) disapproving the rule proposed under section 202, indicated that the committee "accepts the Commission's determination that incremental pricing, as embodied in this rule, is ill-suited to accomplish market ordering or price sheltering"[13] (the dual goals considered by Congress in establishing Title II). The Committee noted particularly the Commission's finding that incremental pricing does not appear to generate the type of demand restraint that Congress sought[14] and the threat of increased residential costs resulting from industrial load loss.[15] On May 20, 1980, the resolution of disapproval passed the House by a vote of 369-34.[16]

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[12] *Id.* at 125a.
[13] *Id.* at 120a.
[14] *Id.* at 11.
[15] *Id.*
[16] H.R.Res. 655, 96th Cong. 2d Sess. 126 Cong. Rec. H3855 (daily ed. May 20, 1980).

4. AGENCY REVOCATION OF PROPOSED RULE

CECA filed with FERC, on June 5, 1980, a petition for rehearing of Order No. 80 making a single argument – that FERC should remove from the Rule II proposal language making its effectiveness contingent upon failure of either house to disapprove, which contingency CECA argued was unconstitutional. On August 1, 1980, FERC denied rehearing of Order No. 80 and revoked the still ineffective proposal, noting that the possibility of Order No. 80 becoming effective, should the legislative veto provision in section 202 be found unconstitutional, would be most "inadvisable."[17] The Commission stressed that it had not made the difficult findings which would reflect Commission approval of the Rule II proposal, and pointed out two serious problems with the proposal which militated against adopting it: (1) the possibility that the minimal savings anticipated to accrue to high-priority users would be more than completely offset in two ways, both in a strict monetary sense, through increased prices for consumer goods, and in a broad social sense, by the significant surcharges and increased reporting and accounting costs incurred by users subject to the expanded program.[18]

CECA sought rehearing of the August 1 order insofar as it revoked Order No. 80, arguing the Commission lacked power to revoke a rule required by statute and that the revocation violated the notice and comment requirement of the Administrative Procedure Act, 5 U.S.C. §553. On October 2, 1980, FERC denied rehearing, concluding that reasoned decisionmaking required revocation of the Rule II proposal and that sufficient opportunity for notice and comment was provided prior to Order No. 80's issuance.[19]

CECA filed petitions for review of FERC's August 1, 1980, and October 2, 1980, orders on September 26, 1980 (No. 80-2184) and October 24, 1980 (No. 80-2312). The court of appeals consolidated the petitions for review on November 7, 1980.

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[17] App. at 199a.

[18] *Id.* at 200a-201a.

[19] *Id.* at 204a-207a.

5. OPINION BELOW

The court of appeals dismissed the contention of Congressional amici that this case should have been brought in the district court on an action for mandamus and determined it had jurisdiction. App. at 17a-20a. The court then considered the issue of severability, rejecting argument that it should determine petitioners' standing to bring the lawsuit on the basis of its determination that section 202(c) is severable from section 202(a).[20] After rejecting another threshold contention of respondents and intervenors, mootness, the court of appeals found the one-house veto unconstitutional. In applying its remedial powers, having found a violation of the notice and comment procedures required by the APA, the court ordered that the Rule II proposal shall take effect. The issuance of the court's mandate has been withheld by the court's order, and by Rule 41 of the Federal Rules of Appellate Procedure.

a. STANDING

Petitioners' complaint before the FERC, recited again to the court of appeals, was that they were injured by the FERC's failure to establish Order No. 80 without condition that neither house disapprove. The apparent injury alleged was that, absent a Rule II, the cost of natural gas to the consumers who are members of the organizations comprising CECA will be increased.

Intervenors American Gas Association, Interstate Natural Gas Association of America, and United Distribution Companies argued that petitioners had provided no explanation of a cognizable injury to a legal right enjoyed by petitioners, citing *Warth v. Seldin*, 422 U.S. 490, 499-501 (1975) and *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227 (1937). Intervenors' position was that section 202 had created no legally enforceable right in petitioners to an extension of incremental pricing and further that petitioners failed to establish injury remediable by a court.

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[20] App. at 22a.

The circuit court opinion's only reference to the issue of standing was a finding that, in light of its ruling that section 202(c) was severable from the remainder of section 202, the question of petitioners' standing to initiate this lawsuit need not be addressed. App. at 22a n.48.

Intervenor American Gas Association included in its timely Petition for Rehearing and Suggestion of Rehearing *en Banc* further argument, based on Article III requirements and citing *Valley Forge, Christian College v. Americans United For Separation of Church and State, Inc., et al.*[21] that petitioners had established no interest cognizable by the federal judiciary. On March 10, 1982, the court denied the petition for rehearing without discussion.

b. SEVERABILITY

Relying exclusively on legislative history, the circuit court found an affirmative answer to the question it posed as determinative, i.e. whether Congress would have enacted the remainder of the statute without the unconstitutional provision.[22] App. at 24a. Citing *United States v. Jackson*,[23] the court found irrelevant the presumption of inseverability that attaches where a statute includes no severability clause as articulated in *Carter v. Carter Coal Co.*[24] The court's discussion of severability included no construction of the statute. The court's conclusion that section 202(c) is severable was based on the court's reading of the conference report accompanying the NGPA and selected floor debates. Claiming that the conference report "fails to mention" in its summary of Title II the legislative review provision contained in section 202, the court found the conference report to support petitioners' argument for severability. App. at 25a.[25] Noting that only two statements, by Senator Jackson and

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[21] 102 S. Ct. 752 (1982).

[22] FERC, congressional *amici* and intervenors argued inseverability, relying on the statute's language and its legislative history.

[23] 390 U.S. 570, 585 n.27 (1968).

[24] 298 U.S. 238, 312 (1936).

[25] Elsewhere, the report describes the operation of the veto straightforwardly. See Conference Report 94-97.

Congressman Dingell, were made during debate over incremental pricing emphasizing the availability of congressional review of any extension, the court construed this perceived silence as evidence that Congress would have enacted both phases of incremental pricing without the veto provision. App. at 25a-28a. In the absence of the veto, the scope of the Phase II rule "would have been left to the Commission's discretion" App. at 29a, and thus, found the court, the veto was not essential to the statutory policy and is severable. App. at 30a.

c. MOOTNESS

FERC, congressional amici, and intervenors argued that this case is moot because of an appropriate revocation by FERC of its Rule II proposal. The court found FERC's revocation order invalid because it was issued without notice and opportunity for comment, and specifically declined to reach the issue of whether FERC was authorized to revoke the rule. App. at 31a. The court construed the term "rule making" utilized by the Administrative Procedure Act to be applicable to FERC's revocation.[26] App. at 33a. Further, the court found no good cause existed for FERC to dispense with notice requirements. App. at 36a.

d. CONSTITUTIONALITY

Petitioners made four separate constitutional attacks on the legislative veto provision in section 202(c), claiming that the veto (1) violates the constitutional doctrine of separation of powers, (2) deprives the President of his veto power under Article I, Section 7 of the Constitution (the Presentment Clause), (3) violates Article I, Section 7's requirement of bicameralism, and (4) delegates legislative authority without standards or provision for judicial review. FERC, the Process Gas Consumers, and the Petrochemical Energy Group did not address these issues. The United States Senate and House of Representatives and intervenors American Gas Association, Interstate Natural Gas Association of America, and United

[26] 5 U.S.C. §551 (5) defines "rule making" as "agency process for formulating, amending, or repealing a rule."

Distribution Companies argued that none of these claims were established.

The Court of Appeals found section 202(c) unconstitutional as (1) preventing the President from exercising his veto power and permitting legislative action by only one house of Congress, and (2) contravening the separation of powers principle implicit in Articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches. The court did not reach the undue delegation issue. App. at 37a.

e. REMEDY EMPLOYED

Intervenors argued that if section 202(c) is declared unconstitutional, the appropriate remedy would be a remand to the Commission for further consideration. Intervenors pointed out that not one but two branches of government have decided against any expansion of incremental pricing.

The circuit court held that, because of the FERC's failure to provide notice and opportunity for comment on the revocation of the Rule II proposal, the rule shall take effect, thirty days from the date of the decision.[27] The circuit court noted that the Commission may use the thirty days to consider whether to amend the substance of the rule or to postpone the effective date further. The court again, however, declined to discuss "the precise scope of the Phase II delegation or the extent, if any, of the Commission's power to delay, amend, or revoke the rule." App. at 104a.

6. PETITION FOR REHEARING

On February 26, 1982, intervenor American Gas Association filed a timely Petition for Rehearing and Suggestion of Rehearing En Banc. A.G.A. argued that the case is extraordinarily important because the circuit court's judgment would result in a rule, rejected by Congress and the FERC, going into

[27] By letter dated February 10, 1982, the clerk of the court of appeals notified parties that, upon issuance of the mandate, the thirty-day period would begin. Issuance of the mandate remains stayed.

effect and possibly causing dramatically higher rates for high priority users of gas resulting from industrial load loss. Had the court decided any of three preliminary issues correctly, neither this exposure to severe economic dislocation nor the confrontation between the legislative and executive Branches would have been caused. The three preliminary issues on which rehearing was sought included: (1) whether Article III requirements were satisfied by petitioners' reliance on section 202 as creating a legal right to extension of incremental pricing, (2) whether the veto provision is severable from the rest of section 202, and (3) whether FERC's revocation mooted the case. Further, A.G.A. argued that only by according an undefined "legal force" to the inchoate Rule II proposal between its issuance by FERC and its veto by the House of Representatives is the court able to find any interference with Executive Branch discretion.[28]

Without discussion, the petition for rehearing was denied March 10, 1982.

THE QUESTIONS ARE SUBSTANTIAL

The extension of incremental pricing still carries with it the potential for severe injury to the economic interests of high priority users (including petitioners), all other users of natural gas, and of the entire natural gas industry. The circuit court's judgment below also has significant and far-reaching effects on issues of importance to all federal courts, including constitutional challenges brought under "citizen standing" concepts, appropriate judicial consideration of severability clauses, the breadth of administrative discretion granted by statute, and the propriety and necessity of reaching constitutional questions. The ultimate constitutionality of a one-house veto is clearly an issue of fundamental governmental importance. However, that issue should not have been reached in this case.

a. ARTICLE III REQUIREMENTS

By proceeding directly to petitioners' constitutional arguments, without determining petitioners' standing to bring this

[28] "Clearly the agency rule has some legal force that a proposed bill does not." App. at 74a.

lawsuit, the circuit court effectively removes any limitations imposed by Article III of the Constitution on the federal judiciary's power to determine the constitutionality of legislative or executive acts. Under no reasonable reading of the statute in question do petitioners obtain an interest cognizable by a federal court, nor are they injured by acts of Congress or the FERC. "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973). However, suitors must show "distinct and palpable injury", and also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. *Duke Power Co. v. Carolina Env. Study Gp.*, 438 U.S. 59, 72 (1978). The circuit court declared that its finding of severability mooted the question of petitioners' standing, since the court found that Congress had committed itself to a policy in favor of incremental pricing's expansion.[29] From this holding flows the court's conclusion that section 202(c) violates Article I, section 7 and the separation of powers doctrine. App. at 84a-85a. By declining to analyze the statute in terms of the legal rights it does and does not create in consumers of natural gas, the court is able to reach the merits of the lawsuit petitioners seek to have adjudicated. However, under no reasonable reading of the statute is a cognizable interest granted to petitioners.

First, Petitioners are barred from seeking review of the FERC orders in question by the terms of the NGPA itself. Title V of the NGPA deals specifically with administration, enforcement and review. Judicial review of certain orders and rules issued under the NGPA is provided in section 506, 15 U.S.C. §3416. Thereafter, in section 507, Congress provided a separate means of review for certain specified provisions, including the Rule II proposal submitted under section 202. Review of such provisions is to be done by Congress itself,

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[29] The circuit court accords legal "force" to the inchoate Rule II proposal between its issuance by FERC and its veto by the House of Representatives. App. at 74a-84a. Consequently, the court finds the veto to have "effectively changed the law by altering the scope of FERC's discretion and preventing an otherwise valid regulation from taking effect." App. at 74a.

and not by courts. Further, section 506(b), under which review is sought here, limits judicial review to a rule or order within the meaning of 5 U.S.C. §551(4):

> "(4) 'rule' means the whole or a part of an agency statement of general or particular applicability and further effect designed to implement, interpret, or prescribe law or policy . . ."

The Rule II proposal patently never attained "applicability" or "further effect" and no judicial review thereof is provided.

Secondly, section 202 evidences no legislative commitment, incorporated in the statute, to an expansion of incremental pricing and thus the decision of FERC not to expand the program causes no injury traceable to its orders challenged here. And, even assuming for purposes of standing analysis that the court of appeals was correct on severability, the informed judgment of FERC to revoke the Rule II proposal after the House's veto invades no legal right of petitioners because FERC's decision was required as the appropriate exercise of responsibilities assumed to be delegated lawfully. Finally, assuming a right was created within petitioners to whatever price shielding might result from expansion, any injury suffered by petitioners from FERC's decision to limit incremental pricing amounts to no more than a generalized grievance most appropriately addressed in the representative branches.

It is important that the only injury possibly cognizable here would be to a vested interest in petitioners, created by section 202(a), in the expansion of incremental pricing and the alleged concomitant price shielding. Both the statute itself and its legislative history compel the conclusion that no vested right in the expansion of incremental pricing was created.[30] Subsection (a) provides two parallel mandates *in tandem*: (1) FERC shall prescribe an amendment to Section 201's rule; and (2) such amendment can take effect *only* as provided in subsection (a)(2). The very structure of subsection (a) thus

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[30] Even the circuit court agreed that the Rule II proposal would go into effect only if neither House disapproves. "No one disputes that this was the *intent* of section 202 as enacted." App. at 25a.

provides the tools for "attuning the mind to a vision comparable to that possessed by the legislature."[31] First, it is clear that the amendment and its possible effectiveness must be considered together.[32] Second, except for the means identified in (a)(2), the statute includes *no other possible way* in which the amendment *can* take effect. The inescapable conclusion is that Congress completed no delegation of authority to FERC to establish as effective the amendment described in section 202.

The legislative history is replete with indicia of Congressional uncertainty as to the ultimate efficiency and value to the high-priority user of an incremental pricing program. Clearly the right of Congress to review the FERC's proposal before determining it desirable was considered by Congress an extremely politically attractive aspect of the bill.[33] As reflected in the statute it drafted, Congress would make no commitment to expansion of incremental pricing, unless convincing proof of its value became later apparent through the experience gained from Phase I. Theoretical and insubstantial savings to high priority consumers could easily be more than off-set by the impacts of economic forces unleashed by the program.[34] The purely speculative nature of the benefits claimed, apparent to Congress and the FERC alike, precludes a finding of "actual injury redressable by a court." *Simon v. Eastern Kentucky Welfare Rights Org.* 426 U.S. 26, 39 (1976).

Assuming the unconstitutionality of section 202(c), severability, and a constitutional delegation of responsibility to FERC, the agency's revocation of the Rule II proposal

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[31] Landis, A Note on "Statutory Interpretation," 43 Harv. L. Rev. 886, 892 (1930).

[32] "The rule that words are to be read in context with the neighboring words in the same document (noscitur a sociis) recognizes that in the field of communication the whole transcends the parts. The whole statute is an extension of this principle, as is the rule that statutes on the same subject (*in pari materia*) are, when enacted by the same jurisdiction, to be read in relation to each other. These broad principles are both relevant and valuable, because they reinforce the use of proper context." R. Dickerson, The Interpretation and Application of Statutes 233 (1975).

[33] See remarks of Senators Jackson and Percy, pp. 6-7 and of Congressman Dingell, p. 7, *supra*.

[34] The maximum savings deemed even theoretically possible to accrue, as a result of both Phase I and the Phase II extension of incremental pricing, to a high-priority user were estimated at $18 per year. App. at 200a.

caused no injury to any right created by Title II. FERC's responsibility was to implement the law in accord with legislative intent, which necessarily required consideration of the same various economic dislocation factors attendant to expansion of incremental pricing originally considered by Congress. If the attempt by Congress to retain the right to a later decision on expansion fails, FERC's statutory responsibility was nonetheless to make the decision for Congress in a manner faithful to the manner in which Congress anticipated making the decision itself. FERC did so and, faced with CECA's Petition for Rehearing, assumed for the first time the responsibility for judging the merits of the proposal and concluded that expansion would expose the marketplace to "significant disruption," which would be most "inadvisable." App. at 199a. No legally enforceable right can be inferred to require the opposite decision.

Assuming this Court finds the minimum showing of injury has been made, prudential principles preclude consideration of petitioners' complaint. No protectable interest in expansion was provided. *See Data Processing Service v. Camp*, 397 U.S. 150, 153 (1969). Further, the question of the societal benefit of incremental pricing should be addressed in Congress, not the courts. Here, the original uncertainty expressed in Congress over price shielding ever ultimately occurring was repeated each time the issue was reconsidered. FERC noted that the Rule II proposal "might be an imperfect instrument for sheltering high priority users from the economic impacts of rapidly increasing natural gas prices." App. at 200a. The House of Representatives agreed. Any such ultimate price shielding so postulated is nonetheless immeasurable by a court, because of the innumerable factors which either cause or preclude its existence. It is a policy question addressed most constructively in legislatures. *See Warth v. Seldin*, 42 U.S. 490, 499 (1975).

b. SEVERABILITY

The court's conclusion is wrong because of its failure to construe the statute itself which gives clear structural and textual direction compelling the conclusion that subsection

(c) is inextricably intertwined with subsection (a). Subsection (a) reads as follows:

> (a) IN GENERAL –
>
> (1) COMMISSION RULE – Not later than 18 months after the date of the enactment of this Act the Commission shall, by rule, prescribe an amendment to the rule required under Section 201 designed to provide for the provisions of this title, of the costs of natural gas which are –
>
> (A) described in Section 203, and
>
> (B) incurred by an interstate pipeline.
>
> (2) EFFECTIVENESS – The amendment required by this section, and any amendment to the rule under section 201 which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c).

As argued above in the context of standing, the separate portions of subsection (a) should be considered together. Thus, the amendment and the means of its effectiveness must be considered together. Indeed, no other possible manner, beyond the legislative review process identified in subsection (a)(2), exists for the amendment to become effective. If the "plain meaning rule" is to have any vitality, the "amendment" required by section 202(a)(1) must be construed as so inextricably intertwined with the specific means provided to make it effective, section 202(a)(2), that to preclude the means of effectiveness must disintegrate the amendment.[35] The real

[35] "If the words convey a definite meaning, which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the fact of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it." *Lake County v. Rollins*, 130 U.S. 662, 670 (1899).

issue here, never addressed by the court, is the inseverability of Section 202(a)(1) from Section 202(a)(2), not merely that of Section 202(c) from Section 202(a). The resolution is clear: the two subsections are inseverable. The effect is also clear. If the veto is unconstitutional, all of section 202 falls, and no Rule II is possible. *McCorkle v. United States*, 559 F.2d 1258 (4th Cir., 1977) *cert. denied*, 434 U.S. 1011 (1978).

Indeed, the legislative history of this Act, strewn with the conflicting statements of desirable policy inherent in the legislative process underlying a major bill devoted to major revision of a major industry, provides strong evidence of the wisdom inherent in the principle that courts should read the words of a statute first. Nonetheless, the colloquies between Senators Jackson and Percy (see pp. 6-7, *supra*) provide ample evidence that expansion of incremental pricing was not intended to occur independently of legislative review.

The circuit court also disregards entirely the presumption of inseverability articulated by this Court in *Carter v. Carter Coal Company*, *supra*, applicable when statutes include no severability clauses. That presumption is supported by common sense: "When the questioned clause restricts a power granted by the legislature the case against severance is strong. Otherwise, the scope of the power would be enlarged beyond the legislature's interest." *McCorkle v. United States, supra* at 1261.

c. MOOTNESS

After Congress prevented extension of incremental pricing, the Rule II proposal remained what it had been, a legal nullity. Consequently, FERC properly performed the ministerial task of withdrawing the proposal. The circuit court wrongly concludes that the FERC violated the requirements of the Administrative Procedure Act (APA) of public notice and opportunity to comment before withdrawing the proposal.[36] Such application of the APA is error because the NGPA applied the requirements of the APA *only* to a "rule or order issued under this Act *having the applicability and effect* of a *rule* as

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[36] App. at 31a-36a.

defined in Section 551(4)"[37] of the APA. The definition of "rule" provided by Section 551(4) does not include the Rule II proposal because the proposal never operated as a rule. Again, section 551(4), in pertinent part, provides:

> "(4) 'rule' means the whole or a part of and agency statement of *general* or particular *applicability* and *further effect* designed to implement, interpret, or prescribe law or policy . . ." (Emphasis added)

The Rule II proposal, which could become effective *only* pursuant to Section 202(a)(2), never did so; nor did it ever attain any applicability or future effect. Hence the APA's requirements do not apply to its revocation, which was proper and the case has been mooted because there is no rule to be challenged.

d. CONSTITUTIONALITY

The court of appeals held section 202(c) unconstitutional on two bases. First, it found that the veto provision violates Article I, Section 7, both by preventing the President from exercising his veto power and by permitting legislative action by only one house of Congress. Secondly, it found that the one-house veto contravenes the separation of powers principle implicit in Articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches. App. at 37a.

Both conclusions flow from a misunderstanding of what Congress did and did not do in the passage of the NGPA. In fact, no legislative action occurred through the resolution of disapproval passed by the House of Representatives. The only policy choice legislated in Title II was provided in section 201. That responsibility, to establish incremental pricing for boiler fuel users, was delegated to and implemented by FERC. Section 202 provided Congress the opportunity to make a discrete

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[37] *See* NGPA Section 502(a), 15 U.S.C. §3412. Further, section 501(a) authorizes FERC to (prescribe . . . and rescind such rules and orders as it may find necessary or appropriate to carry out it functions under this Act."

legislative choice on expansion at a later date.[38] That legislative choice was limited to acceptance or rejection of a specific proposed rule. The rule would take effect as proposed if both houses of Congress, after the amendment had been submitted by FERC to each house, determined not to veto the rule.[39] No discretion was retained by Congress to change the terms of the proposed rule and thereby become involved in the administrative process.

The fundamental error made by the panel is to accord some undefined "legal force" to the inchoate Rule II proposal between its issuance by FERC and its veto by the House of Representatives.[40] Only by conferring, without authority, such legal force can the court find any Executive Branch discretion allegedly interfered with by the veto. But no delegation by Congress occurred. The panel's leap of faith ("Clearly the agency rule has some legal force that a proposed bill does not."[41]) is never supported. Neither the statute nor its legislative history provides a basis to infer such delegation.

The circuit court quotes Alexander Hamilton for the proposition that this veto provision wrongfully allows Congress to participate prospectively in approval or disapproval of law enacted by the executive branch pursuant to a delegation of authority by Congress. App. at 94a.[42] The more reasonable application of Hamilton's complaint is against judicial construction

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[38] Even the Court Appeals recognized that Congress believed that it had decided nothing about expansion of incremental pricing in Title II. "It unquestionably is true that Congress sought to avoid a definitive decision on extension of incremental pricing." App. at 78a, n.172.

[39] The circuit court recognized "that in practice, Congress will usually take some "action" when it determines not to veto a rule . . ." App. at 77a n.170. Indeed, for the constitutional questions addressed by the court of appeals to be ripe for adjudication, both Houses of Congress would have had to determine *not* to pass a resolution of disapproval, which would have allowed the Rule II proposal to go into effect without the President having the opportunity to exercise Article I veto authority directly. *See Clark v. Valeo*, 559 F.2d 642 (D.C. Cir.).

[40] App. at 74a-84a.

[41] *Id.* at 84.

[42] "Law is defined to be a rule of action; but how can that be a rule which is little known and less fixed?" THE FEDERALIST No. 62, at 414 (A. Hamilton), (P. Ford ed. 1898).

as "law" of an effort by Congress to utilize executive branch expertise in fashioning an incremental pricing extension proposal for later, and more informed, consideration of the merits thereof by Congress.

e. DELEGATION

The circuit court, as predicate to its finding of a violation of the Presidential veto power under Article I, Section 7, found that section 202 was a delegation of power to the Executive Branch comporting with the "essentials of the legislative function," and thus not unconstitutional as undue and standardless.[43] App. at 76a. Those essentials include "the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct," the specification of "the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective."[44] The court of appeals, rejecting argument from both houses of Congress that the section 202(a) Rule II proposal was never an effective law, finds that section 202 gave FERC discretion to issue a rule that would "attain binding legal effect without further congressional action,"[45] and thus that the House veto "changed national incremental pricing policy."[46] As shown above, the legislative action contemplated by section 202 in order for binding legal affect to be attained, that is, a determination by both houses that the proposal was appropriate, never occurred. No delegation of power to FERC was effected. The effect of the circuit court's holding is to construe Title II as legislation by accident.

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[43] *Yakus v. United States*, 321 U.S. 414, 424 (1944).

[44] *Id.*

[45] App. at 79a.

[46] App. at 84a. The circuit court is willing to accept congressional amici's statement that the House, invetoing the Rule II proposal, was making a "social policy judgement" (Op. at 80) but disregards their representations establishing that it was at the time of the House's consideration of the veto that, *for the first time*, Congress made a determination of whether there existed the basic conditions of fact upon whose existence an extension of incremental pricing should occur. The House found that such conditions of fact did not exist and vetoed the proposal.

Moreover, if a delegation is found to have occurred under section 202, FERC has been provided with no direction as to the extent of appropriate expansion of incremental pricing. Section 202(b) directs the Commission to define both the "industrial use" of natural gas and a category of industrial facilities to which the expansion shall apply. But nowhere does the statute indicate the factors to be considered by FERC in establishing such definitions, which obviously constitute the very structure of an expanded program.

If the constitutionality of section 202 is properly reached, the statute must fall in its entirety, as a "sweeping delegation of legislative power" unconstitutional under *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 539 (1934).

CONCLUSION

Probable jurisdiction should be noted in this case.

Respectfully submitted,

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APPENDIX

AMERICAN GAS ASSOCIATION, (including, where applicable, parents, other than wholly-owned subsidiaries, and affiliates):

ALABAMA GAS CORPORATION
- ALAGASCO, INC.
- ALAGASCO ENERGY COMPANY, INC.
- ALAGASCO PIPELINE COMPANY
- APPLEX EXPLORATION CORP.

ALASKA GAS & SERVICE COMPANY

ALGONQUIN GAS TRANSMISSION COMPANY
- ALGONQUIN ENERGY, INC.

AMERICAN NATURAL RESOURCES COMPANY
- MICHIGAN WISCONSIN PIPELINE COMPANY
- ANR COAL COMPANY
- ANR WESTERN COAL DEVELOPMENT COMPANY
- BROOKS RUN COAL COMPANY
- APACHE MINING COMPANY
- VICC LAND COMPANY
- VIRGINIA IRON, COAL AND COKE COMPANY
- VICCO COAL COMPANY
- VICCO INTERNATIONAL SALES CORPORATION
- VICCO LEASING COMPANY
- ANR FREIGHT SYSTEM, INC.
- ASSOCIATED TRUCK LINES, INC.
- ASSOCIATED TRUCK LINES OF CANADA, INC.
- GARRETT FREIGHTLINES, INC.
- GRAVES TRUCK LINE
- ROAD EQUIPMENT FINANCING, INC.
- NEUENDORF TRANSPORTATION COMPANY
- NEW LIFE TRANSPORT PARTS CENTER, INC.
- UNITED TRUCK RENTALS, INC.
- ANG COAL GASIFICATION COMPANY
- ANR GASIFICATION PROPERTIES COMPANY

ANR MEDIA COMPANY
ANR STORAGE COMPANY
ANR WESTERN STORAGE COMPANY
AMERICAN NATURAL ALASKAN COMPANY
AMERICAN NATURAL ARCTIC COMPANY
GREAT LAKES GAS TRANSMISSION COMPANY
TRANSCANADA PIPELINES LIMITED

ARANSAS NATURAL GAS COMPANY

ARIZONA PUBLIC SERVICE COMPANY

ARKANSAS OKLAHOMA GAS CORPORATION

ARKANSAS WESTERN GAS COMPANY
SOUTHWESTERN ENERGY COMPANY

ARKLA, INC.

ASHLAND GAS COMPANY

ATLANTA GAS LIGHT COMPANY

BALTIMORE GAS AND ELECTRIC COMPANY
SAFE HARBOR WATER POWER CORPORATION

BATTLE CREEK GAS COMPANY

BAY STATE GAS COMPANY
FITCHBURG GAS AND ELECTRIC LIGHT COMPANY
BOUNDARY GAS, INC.

BERKSHIRE GAS COMPANY

BOONVILLE NATURAL GAS CORPORATION

BOSTON GAS COMPANY
EASTERN GAS AND FUEL ASSOCIATES

BOWLING GREEN GAS COMPANY

BROOKLYN UNION GAS COMPANY
BOUNDARY GAS INC.

HONEOYE STORAGE CORPORATION
VIKING MANUFACTURING CORPORATION

CABOR CORPORATION OF WEST VIRGINIA, A DIVISION OF CABOR CORPORATION OF MASSACHUSETTS

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COLONIAL GAS COMPANY
TRANSGAS INC.
MASSACHUSETTS ASSOCIATES, INC.

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APOLLO GAS COMPANY

CAROLINA PIPELINE COMPANY
CAROLINA ENERGIES, INC.

CASCADE NATURAL GAS CORPORATION

CENTRAL FLORIDA GAS CORPORATION

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

CENTRAL ILLINOIS LIGHT COMPANY

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
ELECTRIC ENERGY, INC.

CHATTANOOGA GAS COMPANY, A DIVISION OF JUPITER INDUSTRIES, INC.

CHESAPEAKE UTILITIES CORPORATION

CHEYENNE LIGHT FUEL & POWER COMPANY

THE CINCINNATI GAS & ELECTRIC COMPANY
THE UNION LIGHT, HEAT AND POWER COMPANY

CITIES SERVICE GAS COMPANY
CITIES SERVICE COMPANY

CITIZENS GAS & COKE UTILITY

CITIZENS GAS FUEL COMPANY

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CITY GAS COMPANY

CITY OF RICHMOND, DEPARTMENT OF PUBLIC UTILITIES

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COLORADO INTERSTATE GAS COMPANY
- THE COASTAL CORPORATION
- CIG EXPLORATION, INC.

THE COLUMBIA GAS SYSTEM, INC.
- COLUMBIA GAS SYSTEM SERVICE CORPORATION
- COLUMBIA LNG CORPORATION
- COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION
- COLUMBIA COAL GAS TRANSMISSION CORPORATION
- COLUMBIA COAL GASIFICATION CORPORATION
- COLUMBIA HYDROCARBON CORPORATION
- THE INLAND GAS COMPANY, INC.
- COLUMBIA GAS OF KENTUCKY, INC.
- COLUMBIA GAS OF MARYLAND, INC.
- COLUMBIA GAS OF NEW YORK, INC.
- COLUMBIA GAS OF OHIO, INC.
- COLUMBIA GAS OF PENNSYLVANIA, INC.
- COLUMBIA GAS OF VIRGINIA, INC.
- COLUMBIA GAS OF WEST VIRGINIA, INC.
- COLUMBIA GAS TRANSMISSION CORPORATION
- COLUMBIA GAS DEVELOPMENT OF CANADA LTD.
- COMMONWEALTH GAS SERVICES, INC.
- COMMONWEALTH GAS PIPELINE CORPORATION
- COMMONWEALTH PROPANE, INC.
- COLUMBIA GULF TRANSMISSION COMPANY
- BIG MARSH OIL COMPANY

HENRICO GAS SERVICE CORPORATION
ATLANTIC ENERGY, INC.

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COMMONWEALTH GAS COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
CANAL ELECTRIC COMPANY
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COMMONWEALTH GAS COMPANY
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COM/ENERGY CAMBRIDGE REALTY
COM/ENERGY EXPLORATION COMPANY
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COM/ENERGY REALTY TRUST
COM/ENERGY RESEARCH PARK REALTY
COM/ENERGY SERVICES COMPANY
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HARTFORD STEAM COMPANY
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BOUNDARY GAS, INC.

CONSOLIDATED NATURAL GAS COMPANY
CONSOLIDATED NATURAL GAS SERVICE COMPANY, INC.
CONSOLIDATED GAS SUPPLY CORPORATION
THE EAST OHIO GAS COMPANY
THE PEOPLES NATURAL GAS COMPANY
THE RIVER GAS COMPANY

WEST OHIO GAS COMPANY
CNG PRODUCING COMPANY
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DELMARVA POWER & LIGHT COMPANY

DISTRIGAS CORPORATION

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ENERCO, INC.
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HAWAIIAN INDEPENDENT REFINERY, INC.
PRI INTERNATIONAL, INC.
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PRI NORTHWEST, INC.
PRIVITY, INC.
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PACIFIC RESOURCES, LTD.
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BREWER PACIFIC AGRONOMICS CO.

GAS LIGHT COMPANY OF COLUMBUS

GAS SERVICE COMPANY

GAS SERVICE, INC.

GAS UTILITIES COMPANY

GREAT FALLS GAS COMPANY

GREAT RIVER GAS COMPANY

GREELEY GAS COMPANY

GULF NATURAL GAS CORPORATION

HAVERHILL GAS COMPANY

HOOSIER GAS CORPORATION

HOUSTON NATURAL GAS CORPORATION
- OASIS PIPE LINE COMPANY
- HT GATHERING COMPANY
- RED RIVER PIPELINE
- RED RIVER PIPELINE CORPORATION
- SAN MARCO PIPELINE COMPANY
- MATAGORDA TERMINALS, LTD.
- MATAGORDA PLANT
- ROBSTOWN PLANT
- HOUSTON PIPELINE COMPANY

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INDIANA GAS COMPANY, INC.

INDIANA NATURAL GAS CORPORATION

INDIANA UTILITIES CORPORATION

INDIANTOWN GAS CO. INC.

INTERMOUNTAIN GAS COMPANY
- INTERMOUNTAIN GAS INDUSTRIES, INC.

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IOWA POWER AND LIGHT COMPANY
- IOWA RESOURCES INC.
- ENERCOR, INC.
- IOWA POWER RESOURCES, INC.
- REDLANDS, INC.

MIDDLEWOOD, INC.
IOWA COMPUTER RESOURCES INC.
UNITRAIN INC.
WESCON INDUSTRIES, INC.
ENSERCO, INC.
H. L. HOAK COMPANY, INC.

IOWA PUBLIC SERVICE COMPANY

JACKSON UTILITY DIVISION, CITY OF JACKSON, TENN.

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MICHIGAN GAS UTILITIES COMPANY
- MICHIGAN ENERGY RESOURCES COMPANY
- SOUTHERN MICHIGAN PRODUCTION COMPANY
- COMMUNICATIONS AND CABLEVISION, INC.
- KENERGY PETROLEUM CORPORATION
- MGU DEVELOPMENT CO.

MIDCON CORP.
- ANTHRUST, INC.
- BUCKHORN PETROLEUM CO.
- CHAPPERAL COAL CORPORATION
- E.K. COAL CO., INC.
- EMPIRE COAL COMPANY
- EXETER CANADIAN EXPLORATION, LTD.
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- EXETER COMPANY
- EXETER DRILLING CENTRAL, INC.
- EXETER DRILLING NORTHERN, INC.
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- EXETER SERVICE COMPANY
- EXETER VENTURES CORPORATION
- FAIRWAY COAL COMPANY
- HARPER OIL COMPANY
- INDUSTRIAL FUELS CORPORATION
- M & O COAL COMPANY
- NAAACO, INC. (Del.)
- NAERCO, INC.
- NALOCO, INC. (Del.)
- NANBCO INC.

NAPECO INC.
NATOCO, INC.
NATURAL GAS PIPELING COMPANY OF AMERICA
NATURAL-TRINIDAD AND TOBAGO ENGINEERING COMPANY
NGPL-CANYON COMPRESSION CO.
NGPL EXPLORATION COMPANY
NGPL LIQUIDS, INC.
NGP-LNG, INC.
NGPL-OVERTHRUST INC.
NGPL TERMINAL COMPANY
NGPL-TRAILBLAZER INC.
NGLP WILLISTON, INC.
MCN EXPLORATION COMPANY
NGPL OFFSHORE COMPANY
MCN OVERSEAS INC.
MCN-TRINIDAD AND TOBAGO LNG COMPANY
MCN COAL GASIFICATION COMPANY
NORTH SHORE GAS COMPANY
PEOPLES ENERGY CORPORATION
PEOPLES GAS LIGHT & COKE COMPANY
PRATER CREED PROCESSING COMPANY
RED CEDAR MINING COMPANY, INC.
TEXOMA PRODUCTION COMPANY
TWIN OAKS COAL COMPANY
UMET MINING CORPORATION
WEATCOAL CORPORATION
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MOBILE GAS SERVICE CORPORATION

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MT. CARMEL PUBLIC UTILITY CO.

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- ALABAMA OXYGEN COMPANY, INC.
- TENNESSEE OXYGEN COMPANY

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
- NATIONAL FUEL GAS COMPANY
- NATIONAL FUEL GAS SUPPLY CORPORATION
- SENECA RESOURCES CORPORATION
- PENN-YORK ENERGY CORPORATION

NEW JERSEY NATURAL GAS COMPANY
- NEW JERSEY RESOURCES CORPORATION
- GAS ASSOCIATED SERVICES, INC.
- NEW JERSEY NATURAL RESOURCES COMPANY

NEW ORLEANS PUBLIC SERVICE INC.
- MIDDLE SOUTH UTILITIES, INC.
- SYSTEM FUELS, INC.
- ARKANSAS POWER & LIGHT COMPANY
- LOUISIANA POWER & LIGHT COMPANY
- MISSISSIPPI POWER & LIGHT COMPANY
- MIDDLE SOUTH SERVICES, INC.
- MIDDLE SOUTH ENERGY, INC.

NEW YORK STATE ELECTRIC & GAS CORPORATION
- SOMERSET RAILROAD CORPORATION

NIAGARA MOHAWK POWER CORPORATION
- BEEBEE ISLAND CORPORATION
- MOREAU MANUFACTURING CORPORATION

NORCO GAS & FUEL CO., INC.

NORTH ATTLEBORO GAS COMPANY

NORTH CAROLINA NATURAL GAS CORPORATION

NORTH CENTRAL PUBLIC SERVICE CO.
DONOVAN COMPANIES, INC.
SOUTHERN GAS COMPANY

NORTH PENN GAS COMPANY
PENN FUEL SYSTEM, INC.
PENN FUEL GAS, INC.

NORTHEAST UTILITIES COMPANY

NORTHERN ILLINOIS GAS COMPANY
NICOR INC.

NORTHERN INDIANA FUEL & LIGHT COMPANY

NORTHERN INDIANA PUBLIC SERVICE COMPANY

NORTHERN NATURAL GAS COMPANY

NORTHERN STATES POWER COMPANY, A MINNESOTA COMPANY
NORTHERN STATE POWER COMPANY, A MINNESOTA CORPORATION
LAKE SUPERIOR DISTRICT POWER COMPANY
NORTHERN STATE POWER COMPANY
CORMORANT CORPORATION
UNITED POWER & LAND COMPANY

NORTHERN UTILITIES, INC.

NORTHWEST ALASKAN PIPELINE COMPANY

NORTHWEST NATURAL GAS COMPANY

NORTHWEST PIPELINE CORPORATION
NORTHWEST ENERGY COMPANY
PHILLIPS PACIFIC CHEMICAL COMPANY

NORTHWESTERN PUBLIC SERVICE COMPANY

OAKRIDGE UTILITY DISTRICT

OHIO GAS COMPANY

OKLAHOMA NATURAL GAS COMPANY, A DIVISION OF ONEOK, INC.

ORANGE AND ROCKLAND UTILITIES, INC.
ROCKLAND ELECTRIC COMPANY
PIKE COUNTY LIGHT & POWER COMPANY
O&R ENERGY DEVELOPMENT, INC.
CLOVE DEVELOPMENT CORP.

PACIFIC GAS AND ELECTRIC COMPANY
PACIFIC GAS TRANSMISSION COMPANY
PACIFIC INDONESIA LNG COMPANY
STANDARD PACIFIC GAS LINE INCORPORATED
ALBERTA NATURAL GAS COMPANY
PACIFIC TRANSMISSION SUPPLY COMPANY
ROCKY MOUNTAIN GAS TRANSMISSION COMPANY

PANHANDLE EASTERN PIPE LINE COMPANY
PANHANDLE EASTERN CORPORATION
NATIONAL DISTILLERS AND CHEMICAL CORPORATION
NATIONAL HELIUM CORPORATION

PENNSYLVANIA & SOUTHERN GAS COMPANY

PENNSYLVANIA GAS & WATER COMPANY

PEOPLES GAS SYSTEM, INC.

PEOPLES NATURAL GAS COMPANY OF SOUTH CAROLINA

PEOPLES NATURAL GAS COMPANY, A DIVISION OF INTERNORTH, INC.

PEQUOT GAS COMPANY

PHILADELPHIA ELECTRIC COMPANY

PHILADELPHIA GAS WORKS

PIEDMONT NATURAL GAS COMPANY, INC.

POLARIS CORPORATION

THE PROVIDENCE GAS COMPANY
PROVIDENCE ENERGY CORPORATION
NEWPORT AMERICA CORPORATION
ARROWHEAD PROPANE COMPANY
PRUDENCE CORPORATION
RESOURCE MONITORS, INC.

PUBLIC SERVICE COMPANY OF COLORADO
PUBLIC SERVICE COMPANY OF COLORADO
HOME LIGHT AND POWER COMPANY

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

RICHMOND GAS CORPORATION

RIVER GAS COMPANY

ROANOKE GAS COMPANY

ROCHESTER GAS AND ELECTRIC CORPORATION

ROCKY MOUNTAIN NATURAL GAS COMPANY, INC.
GASCO, INC.
RMNG GATHERING CO., INC.
INDUSTRIAL MECHANICS, INC.

SAN DIEGO GAS & ELECTRIC COMPANY

SIERRA PACIFIC POWER COMPANY

SOUTH CAROLINA ELECTRIC & GAS COMPANY
CAROLINA ENERGIES, INC.

SOUTH COUNTY GAS

SOUTH FLORIDA NATURAL GAS COMPANY

SOUTH JERSEY GAS COMPANY
- SOUTH JERSEY INDUSTRIES, INC.
- ENERGY & MINERALS, INC.
- JESSEE S. MORIE & SON, INC.
- SOUTH JERSEY FUEL, INC.
- DELAWARE VALLEY INDUSTRIAL GASES, INC.
- SOUTH JERSEY EXPLORATION COMPANY
- SOUTH JERSEY ENERGY COMPANY

SOUTHEASTERN MICHIGAN GAS COMPANY
- SOUTHEASTERN MICHIGAN GAS ENTERPRISES
- SOUTHEASTERN MICHIGAN ENGINE SPECIALISTS, INC.
- SOUTHEASTERN EXPLORATION COMPANY

SOUTHERN CALIFORNIA GAS COMPANY
- PACIFIC LIGHTING CORPORATION
- ANKIRK DEVELOPMENT CORPORATION
- BLACKFIELD HAWAII CORPORATION
- CALIFORNIA LNG COMPANY
- CENTRAL PLANTS, INC.
- DUAL FUEL INTERNATIONAL, INC.
- DUAL FUEL PRODUCTS, INC.
- DUAL FUEL SYSTEMS, INC.
- DUNN PROPERTIES CORPORATION
- DUNN PROPERTIES OF GEORGIA, INC.
- DUNN PROPERTIES OF TEXAS, INC.
- FREDERICKS SALES, INC.
- FREDERICKS DEVELOPMENT CORPORATION
- FUEL INDUSTRIES NEW ZEALAND LIMITED
- GENERAL COMMUNICATIONS COMPANY OF AMERICA
- GENERAL SCIENTIFIC COMPANY
- HAWAII MANAGEMENT CORPORATION
- MAYFLOWER REALTY ASSOCIATES, INC.

PACIFIC ALASKA LNG COMPANY
PACIFIC COAL GASIFICATION COMPANY
PACIFIC ENERGY RESOURCES COMPANY
PACIFIC INDONESIA LNG COMPANY
PACIFIC INTERSTATE COMPANY
PACIFIC INTERSTATE TRANSMISSION COMPANY
PACIFIC INTERSTATE TRANSMISSION COMPANY (ARCTIC)
PACIFIC INTERSTATE TRANSMISSION COMPANY (Rocky Mountain)
PACIFIC INTERSTATE OFFSHORE COMPANY
PACIFIC LIGHTING EXPLORATION COMPANY
PACIFIC LIGHTING FUELS DEVELOPMENT COMPANY
PACIFIC LIGHTING GAS DEVELOPMENT (Canada) LTD.
PACIFIC LIGHTING GAS DEVELOPMENT COMPANY
PACIFIC LIGHTING GAS SUPPLY COMPANY
PACIFIC LIGHTING INTERNATIONAL FINANCE N. V.
PACIFIC LIGHTING LAND COMPANY
PACIFIC LIGHTING LEASING COMPANY
PACIFIC LIGHTING MARINE COMPANY
PACIFIC LIGHTING OVERSEAS FINANCE N. V.
PACIFIC LIGHTING PROPERTIES, INC.
PACIFIC OFFSHORE PIPELINE COMPANY
PACIFIC REAL ESTATE PROJECTS, INC.
S. M. DUNN, INC.
SMA DEVELOPMENT CORPORATION
SOUTHERN CALIFORNIA CONSERVATION FINANCING CO.
SOUTHERN CALIFORNIA GAS COMPANY
SOUTHERN CALIFORNIA SOLAR FINANCING COMPANY
WESTERN LNG TERMINAL COMPANY

THE SOUTHERN CONNECTICUT GAS COMPANY
CONNECTICUT ENERGY CORPORATION

GAS STORAGE, INC.
ONSET MARKETING CORPORATION
RESOURCE PRODUCTION, INC.
SCG GAS QUEST, INC.
SCG PIPELINES, INC.
ECON, INC.

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

SOUTHERN NATURAL GAS COMPANY
SONAT, INC.

SOUTHERN UNION COMPANY

SOUTHWEST GAS CORPORATION
DON A HARRIS & ASSOCIATES, INC.

SOUTHWESTERN VIRGINIA GAS COMPANY
SOUTHWESTERN VIRGINIA ENERGY INDS., LTD
MIDWAY BOTTLED GAS COMPANY, INC.
SOUTHWESTERN VIRGINIA GAS SERVICE CORPORATION

ST. LAWRENCE GAS COMPANY, INC.
THE CONSUMERS' GAS COMPANY LTD.

SUFFOLK GAS CORPORATION

SUPERIOR WATER, LIGHT AND POWER COMPANY

SYRACUSE SUBURBAN GAS COMPANY, INC.

TENNESSEE GAS PIPELINE COMPANY

TENNESSEE GAS TRANSMISSION COMPANY
TENNECO INC.

TENNESSEE-VIRGINIA ENERGY CORPORATION

TERRE HAUTE GAS CORPORATION

TEXAS EASTERN GAS PIPELINE COMPANY

TEXAS GAS TRANSMISSION CORPORATION
- AMCOM, INC.
- AMERICAN CARRIERS, INC.
- AMERICAN FREIGHT SYSTEM, INC.
- ALL-AMERICAN REDEVELOPMENT CORPORATION
- ATLANTIC TRANSPORT SERVICE, INC.
- TRANSPORT BROKERAGE, INC.
- M.C.T. SERVICES, INC.
- MIDWEST COAST TRANSPORT, INC.
- SIOUX FALLS SERVICE CENTER, INC.
- AMERICAN COMMERCIAL BARGE LINE COMPANY
- AMERICAN COMMERCIAL CREDIT CORPORATION
- AMERICAN COMMERICAL LEASING COMPANY
- AMERICAN COMMERCIAL TERMINALS, INC.
- BAUER DREDGING CO., INC.
- COMMERCIAL ARGE LINE COMPANY
- COMMERCIAL CARRIERS, INC. (MICHIGAN)
- COMMERCIAL CARRIERS, INC. (ILLINOIS)
- NATIONAL TRUCKING COMPANY
- INLAND TUGS CO.
- JEFFBOAT, INCORPORATED
- LOUISIANA DOCK COMPANY, INC.
- MAC TOWING COMPANY, INC.
- WATERWAY COMMUNICATIONS SYSTEM, INC.
- TEXAS GAS SYNFUEL CORPORATION
- TXG RESOURCES, INC.
- TEXAS GAS EXPLORATION (U.K.) CORPORATION
- TEXAS GAS EXPLORATION (U.K.) LIMITED

TRANSCONTINENTAL GAS PIPE LINE CORPORATION
- TRANSCO COMPANIES, INC.
- BORDER GAS, INC. (CLOSE CORPORATION)

TRUNKLINE GAS COMPANY

TWIN GAS COMPANY

UGI CORPORATION

UNION LIGHT, HEAT & POWER COMPANY, INC.

UNION OIL & GAS INC.

UNITED CITIES GAS COMPANY

UNITED GAS PIPELINE COMPANY
- UNITED ENERGY RESOURCES, INC.
- SEA ROBIN PIPELINE COMPANY
- HIGH ISLAND OFFSHORE SYSTEM (HIOS)
- U-T OFFSHOORE SYSTEM (UTOS)
- NORTHERN BORDER PIPELINE COMPANY
- ALASKAN NORTHWEST NATURAL GAS TRANSPORTATION COMPANY
- TRANS-ANADARKO PIPELINE SYSTEM

VALLEY GAS COMPANY
- VALLEY RESOURCES, INC.
- VALLEY PROPANE, INC.
- VAMCO
- RIDEC

VERMONT GAS SYSTEMS, INC.

VIRGINIA NATURAL GAS, A DIVISION OF VIRGINIA ELECTRIC AND POWER COMPANY

WASHINGTON GAS LIGHT COMPANY

WASHINGTON NATURAL GAS COMPANY
- WASHINGTON ENERGY COMPANY
- THERMAL ENERGY, INC.
- THERMAL EXPLORATION, INC.
- THERMAL EFFICIENCY, INC.
- THERMRAIL, INC.

WASHINGTON WATER POWER COMPANY

WEST OHIO GAS COMPANY

WESTERN KENTUCKY GAS COMPANY

WESTERN SLOPE GAS COMPANY

WISCONSIN FUEL AND LIGHT COMPANY
ENEREX EXPLORATION

WISCONSIN GAS COMPANY

WISCONSIN NATURAL GAS COMPANY
WISCONSIN ELECTRIC POWER COMPANY
WISCONSIN MICHIGAN POWER CO., INC.
WISCONSIN ENERGY CORP.
WEPCO ACQUISITIONS, INC.
BADGER SERVICE CO.

WISCONSIN POWER AND LIGHT COMPANY
WISCONSIN RIVER POWER COMPANY

WISCONSIN SOUTHERN GAS COMPANY
J. H. FAGAN COMPANY

WYOMING GAS COMPANY